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10
11 **UNITED STATES DISTRICT COURT**
FOR THE NORTHERN DISTRICT OF CALIFORNIA
12 **SAN FRANCISCO DIVISION**

13 **CENTER FOR BIOLOGICAL DIVERSITY**
14 *et al.*,

15 Plaintiffs,

16 v.

17 **MICHAEL S. REGAN**, in his official capacity
18 as the Administrator of the United States
Environmental Protection Agency,

19 Defendant.
20

Case No. 3:22-cv-3309-RS

**NOTICE TO COURT OF
DEFENDANT'S DELAYED
COMPLIANCE WITH CONSENT
DECREE PARAGRAPH 2**

21 Defendant Michael S. Regan, in his official capacity as the Administrator of the United
22 States Environmental Protection Agency (hereinafter "EPA"), files this notice advising the Court
23 that EPA inadvertently failed to timely comply with its obligation under Paragraph 2 of the
24 Consent Decree entered by the Court on June 15, 2023. *See* E.C.F. No. 37. Under that
25 Paragraph, EPA is obligated to "notify Plaintiffs within fifteen business days of receiving a
26 written request from a State to withdraw a SIP submission addressing any or all of the elements
27 listed in Paragraph 1 for that State." Consent Decree, ¶ 2. On July 5, 2023, Colorado submitted
28 a letter to EPA Region 8 withdrawing elements of its State Implementation Plan ("SIP")

1 identified in Consent Decree Paragraph 1.a. Undersigned counsel was not advised of this
 2 withdrawal until August 10, 2023. Although Plaintiffs were made aware of the July 5, 2023
 3 withdrawal on August 10, 2023, EPA acknowledges that this occurred after the fifteen business
 4 day time frame required by Paragraph 2 of the Consent Decree.

5 While the delay in notifying Plaintiffs of the withdrawal of elements of the Colorado SIP
 6 was inadvertent and in no way intentional, EPA deeply regrets this oversight and assures the
 7 Court that it takes its Consent Decree obligations seriously. Undersigned counsel has reminded
 8 all EPA regional counsel of their Paragraph 2 obligations, and EPA Region 8 is taking steps to
 9 ensure that it has additional measures in place to consistently track consent decree deadlines and
 10 to meet conditional obligations such as those in Paragraph 2.

11 The undersigned has conferred with counsel for Plaintiffs, who has advised as follows:
 12 Plaintiffs do not believe any further action is necessary with regard to EPA's failure to comply
 13 with the Paragraph 2 notice requirement.

14 EPA respectfully submits this filing as notice to the Court of the above but does not
 15 request any further action from the Court at this time.

16 Respectfully submitted,

17 Date: August 24, 2023

18 TODD KIM
 19 Assistant Attorney General

20
 21 /s Alexander M. Purpuro
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